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In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE E. PATAKI, GOVERNOR
OF THE STATE OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred in holding that Indian Tribes and the United States were barred by laches from suing the State of New York for money damages as compensation for the State's acquisition of tribal lands in violation of federal law.

PARTIES TO THE PROCEEDING

The petitioner is the United States of America. The Cayuga Indian Nation of New York and the Seneca-Cayuga Nation of Oklahoma were plaintiffs in the district court and appellees/cross-appellants in the court of appeals.

The following respondents were defendants in the district court and appellants/cross-appellees in the court of appeals: AT&T; Harry F. Amidon; Town of Aurelius, New York; Village of Aurora, New York; Floyd Baker; Marjorie Baker; William H. Bancroft; Mary Barnes; John Bartow, Director, New York State Environmental Facilities Corp.; Howard Bellman; Norma Bilack, Clerk, Town of Springport, New York; Howard Birdsall; Jeanne Birdsall; Joseph H. Boardman, Commissioner of Transportation; David Brooks, Clerk, Town of Ledyard, New York; Nancy E. Carey, Member of the Board of Directors, New York State Thruway Authority; Timothy S. Carey, Trustee, Power Authority for the State of New York; Bernadette Castro, Commissioner of Parks and Recreation; County of Cayuga, New York; Village of Cayuga, New York; Louis P. Ciminelli, Trustee, Power Authority for the State of New York; Consolidated Rail Corp.; John J. Conway; Willis M. Cosad; Erin M. Crotty, Commissioner of Environmental Conservation and Chairman of Board of Directors, New York State Environmental Facilities Corp.; Leo Davids, Jr., Supervisor, Town of Varick, New York; Randy Deal; Lawrence F. DiGiovanna, Director, New York State Environmental Facilities Corp.; Gerard D. DiMarco, Trustee, Power Authority for the State of New York; Division of General Services of the Executive Department of the State of New York; Eisenhower College of the Rochester Institute of Technology; Dorothy Engst; Wesley Engst; Town of Fayette; John H. Fenimore, Adjutant General, New York State Division of Military and Naval

Affairs; Earl E. Fox; Robert Freeland, Mayor of Village of Seneca Falls, New York; Jeanne Freier; Louis Freier; Frederick Gable; Kenneth Gable; Arthur J. Gajarsa; Glenn S. Goord, Commissioner of Correctional Services; Frank A. Hall, New York State Division of Youth; Robert W. Hayssen, Chairman, Board of Supervisors for County of Seneca, New York; William C. Hennessy; Willis M. Hoster; J. Souhan & Sons, Inc.; John A. Johnson, Commissioner, Office of Children and Family Services; Edwin Kelly; Ellen Kelly; Victoria S. Kennedy, Director, New York State Environmental Facilities Corp.; John L. King; Gail Kirk; William J. Kirk; David L. Koch; Henry Wm. Koch; Gordon Lambert; Grace Lambert; Town of Ledyard; Lehigh Valley Railroad; George G. Markel; Grace Martin; Leon Martin; Thomas B. Masten, Jr.; William F. McCarthy, Director, New York State Environmental Facilities Corp.; Frank S. McCullough, Trustee, Power Authority for the State of New York; James W. McMahon, Superintendent, Division of the New York State Police of the Executive Department of the State of New York; Frank P. Milano, Director, New York State Environmental Facilities Corp.; Miller Brewing Co.; Richard P. Mills, Commissioner, New York State Education Department and Commissioner, State University of New York; Town of Montezuma; Mari B. Mosher; Ralph E. Mosher; Thomas J. Murphy, Executive Director, Dormitory Authority of the State of New York; New York State Department of Corrections; New York State Department of Health; New York State Department of Mental Hygiene; New York State Department of Transportation; New York State Department of Environmental Conservation; New York State Division for Youth; New York State Division of Military and Naval Affairs; New York State Division of State Police; New York State Education Department; New York State Electric & Gas Corp.; New York State Environmental Facilities Corp.; New

York State Facilities Development Corp.; New York State Office of Parks and Recreation; New York State Thruway Authority; New York Telephone Co.; Ferdinard L. Nicandri; June Nicandri; M.D. Antonia C. Novello, Commissioner of Health and Director, New York State Environmental Facilities Corp.; Emerson O'Connor; Leah O'Connor; Ted W. O'Hara; Jessica Olsowske; William Olsowske; David G. Palmer; George E. Pataki, Governor of the State of New York; F.H. Patterson; W. W. Patterson, Jr.; Paul Perkins; Power Authority of the State of New York; Marilyn Proulx, Clerk, Town of Aurelius, New York; R.N. Patreal Corp.; John R. Riedman, Member of the Board of Directors, New York State Thruway Authority; Anna Rindfleisch; Kenneth J. Ringler, Commissioner, Division of General Services of the Executive Department of the State of New York; Ann W. Ryan, Clerk of Village of Union Springs, New York; Marilyn Salato, Clerk of Village of Cayuga, New York; Frank A. Saracino, Supervisor, Town of Seneca Falls, New York; Arlene Saxton; George Saxton; County of Seneca, New York; Joseph J. Seymour, Trustee, Power Authority for the State of New York; Jacqueline Smith, Clerk, Town of Montezuma, New York; James Somerville, Town Supervisor, Town of Fayette, New York; George G. Souhan; Eliot Spitzer, New York State Attorney General; Bruce Stahl; Ralph A. Standbrook, Chairman of County Legislature for County of Cayuga, New York; State University of New York; State of New York; John Strecker; Victoria Strecker; Alberta Stuck; Millard Stuck; Benjamin Swayze; Victoria Swayze; Henry Tamburo; Louis R. Tomson, Chairman and Member of the Board of Directors, New York State Thruway Authority; Town of Seneca Falls, New York; Town of Springport, New York; Ronald Tramontano, Director, New York State Environmental Facilities Corp.; U.S. Department of Education; Eric E. Van Loon, Settlement Master; Town of

Varick, New York; Village of Seneca Falls, New York; Village of Union Springs, New York; W.W. Patterson, Inc; Clifford Waldron; Wells College; Robert E. White; and Lelia M. Wood-Smith, Director, New York State Environmental Facilities Corp.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States of America, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-50a) is reported at 413 F.3d 266. Opinions of the district court are reported at 89 F.R.D. 627, 544 F. Supp. 542, 565 F. Supp. 1297 (App. 466a-536a), 667 F. Supp. 938 (App. 443a-465a), 730 F. Supp. 485 (App. 423a-442a), 758 F. Supp. 107 (App. 400a-422a), 762 F. Supp. 30, 766 F. Supp. 69, 771 F. Supp. 19 (App. 388a-399a), 79 F. Supp. 2d 66, 79 F. Supp. 2d 78, 83 F. Supp. 2d 318, 165 F. Supp. 2d 266 (App. 120a-321a), and 188 F. Supp. 2d 223 (App. 58a-119a). An additional opinion of the district court (App. 322a-387a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 28, 2005. Petitions for rehearing were denied on September 8, 2005 (App. 537a-538a, 539a-540a). On November 21, 2005, Justice Ginsburg extended the time for filing a petition for a writ of certiorari to and including January 6, 2006. On December 27, 2005, Justice Ginsburg further extended the time for filing a petition for a writ of certiorari to and including February 3, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The following statutory provisions are reproduced in the appendix to this petition: 25 U.S.C. 177 (App. 541a); 28 U.S.C. 2415(a) and (b) (App. 542a-544a); and Section 5(c) of Public Law No. 97-394, 96 Stat. 1978 (App. 544a).

STATEMENT

1. The Cayuga Nation was part of the Six Nations, an alliance of Iroquois-speaking Tribes predating Columbus. App. 189a-190a. "Prior to the Revolutionary War, Cayuga territory comprised approximately 1700 square miles, spanning from Lake Ontario southward into Pennsylvania." App. 190a. The Nation's members practiced a "mixed economy" that included agriculture, hunting, gathering, and fishing. App. 198a. Early in the Revolutionary War, the Six Nations remained neutral, but most of the Cayugas ultimately supported the British. App. 191a-192a. As a result of a subsequent campaign against British-allied Tribes in which both the Continental and New York governments participated, the Six Nations' population fell precipitously, and post-war conditions prevented most surviving Cayugas from reclaiming their destroyed villages. App. 194a-199a; C.A. App. A7676-A7681. The Cayugas dispersed into three main groups: the majority